

MF 06-10

Tax Type: Motor Fuel Use Tax

Issue: Motor Fuel Distributor – 5 Day Revocation

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC SERVICES, INC.,
Taxpayer**

**Docket No.: 00-ST-0000
License No.: 0-00000
License No.: 0-00000**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue

Synopsis:

This case comes on for hearing pursuant to ABC Services' protest of a Notice of License Revocation (hereinafter referred to as the "Notice"), issued by Illinois Department of Revenue's (hereinafter referred to as the "Department"), wherein the Department advised it was revoking taxpayer's distributor license 0-00000 and its receiver license 0-00000. The basis of the revocation was that the taxpayer had no gasoline exporting activity. The taxpayer was represented at the hearing by its secretary, Mr. *John Doe*, who also testified on the taxpayer's behalf. Following a review of the record, it is my recommendation that the licenses at issue be revoked. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The Department's *prima facie* case consisting of the Certification of Records and the notice was established by admission into evidence of Dept. Ex. No 1. The basis of the notice was that the taxpayer had no gasoline exporting activity from January 2003 to the date of the hearing. (Dept. Ex. No. 1; Tr. p. 6)

CONCLUSIONS OF LAW:

This case proceeds under the operative statute, 35 ILCS 505/16, which states in relevant part:

The Department may, after 5 days' notice, revoke the distributor's, receiver's, or supplier's license or permit of any person (1) who does not operate as a distributor, receiver, or supplier (a) under Sections 1.2, 1.14, or 1.20, (2) who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act, or (3) who refuses to allow any inspection or test authorized by this Law.

Any person whose returns for 2 or more consecutive months do not show sufficient taxable sales to indicate an active business as a distributor, receiver, or supplier shall be deemed to not be operating as a distributor, receiver, or supplier as defined in Sections 1.2, 1.14 or 1.20.

The taxpayer admitted that he had had no activity under this account for a year. (Tr. p. 11) Taxpayer wishes to keep this number because ABC Services is billed on a gross gallon basis,¹ which is an advantage in colder weather. Three years ago, taxpayer found it advantageous to buy through an affiliated buyer, also licensed in Illinois, that is billed on a net gallon basis,² which is an advantage in warmer weather. Taxpayer still retains its distributor's

¹ When fuel is sold on a gross gallon basis, the diesel fuel is simply loaded into the truck. In the winter, fuel is very dense and it is advantageous to purchase it in this manner. (Tr. p. 10)

² When fuel is sold on a net gallon basis, the fuel is corrected to 60 degrees and then loaded on the truck. This method is more advantageous to the taxpayer in the summer. (Tr. p. 10)

license for the net gallon purchase operation. (Tr. p. 10) However, it wishes to keep these licenses as well in case the market changes and it is to taxpayer's benefit to purchase gas on a gross gallon basis. (Tr. p. 8)

The law in this area is clear, that is, if a person holding a receiver's or distributor's license does not show sufficient taxable sales for two or more consecutive months, they are no longer operating as a receiver or a distributor.

The taxpayer admitted that it has been a long time since the licenses at issue have been used. The Department is authorized to revoke the distributor's and receiver's licenses when the taxpayer's returns reflect that it has not acted as a receiver or distributor for two or more consecutive months.

WHEREFORE for the reasons stated above it is recommended that *ABC* service's distributor license 0-00000 and its receiver license 0-00000 be revoked.

Barbara S. Rowe
Administrative Law Judge
Date: August 23, 2006